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Attorneys for Defendant Walmart Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MEDFORD DIVISION

DOROTHY MATTOS

Case No. _____

Plaintiff,

v.

**DEFENDANT'S NOTICE OF
REMOVAL**

WALMART INC.,

JURY TRIAL DEMANDED

Defendant.

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1441, § 1446, and § 1332(a), Defendant Walmart Inc. ("Defendant") removes this action from the Circuit Court of the State of Oregon for the County of Deschutes to the United States District Court for the District of Oregon, Eugene Division pursuant to LR 3-2(a)(3).

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RELEVANT FACTS

On October 15th, 2019, Plaintiff served Defendant with a Summons and Complaint captioned *Dorothy Mattos. v. Walmart Inc.*, Case No. 19CV44853, filed in the Circuit Court for the State of Oregon for the County of Jackson. *See* Declaration of John R. Barhoum (“Barhoum Decl.”), ¶2. Copies of the Summons and Complaint are attached hereto as Exhibits A and B, respectively. *Id.* These documents, taken together, constitute all process, pleadings, and orders served on Defendant in that action up to the present date. *Id.*

GROUND FOR REMOVAL

Pursuant to 28 U.S.C. § 1441(a), a defendant may remove an action filed in the state court to the United States District Court if the district court has diversity jurisdiction over the action. This action is one over which the district court has diversity jurisdiction under 28 U.S.C. § 1332(a)(1). The grounds for removal of this action are:

1. Plaintiff’s principle claims for relief against Defendant exceed \$75,000. Plaintiff seeks damages of \$122,000.00. Complaint ¶7-8.

2. Plaintiff and Defendant are residents of different states. Based on information and belief, Plaintiff resides in Oregon and Defendant is a Delaware foreign business corporation. *See* Defendant’s Corporate Disclosure Statement (being filed concurrently). Defendant’s principal place of business in Arkansas. Barhoum Decl., ¶3. Therefore, the United States District Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).

3. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b), as less than 30 days have elapsed since copies of the Summons and Complaint were served on Defendant. A copy of the Affidavit of Service provided by Plaintiff is attached hereto as Exhibit C. Barhoum Decl., ¶2.

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4. No further proceedings have occurred in the Circuit Court of the State of Oregon for the County of Jackson as of the date of this removal other than outlined herein.

5. Counsel for Defendant will file a copy of this Notice of Removal with the Clerk of the Circuit Court of the State of Oregon for the County of Jackson and will give notice of the same to Plaintiff as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant Walmart Inc. prays that this action be removed from the Circuit Court for the State of Oregon for the County of Jackson and placed on the docket of the United States District Court for the District of Oregon in the Medford Division.

Dated this 12th day of November, 2019.

CHOCK BARHOUM LLP



John R. Barhoum, OSB No. 045150
Email: john.barhoum@chockbarhoum.com
Attorneys for Defendant Walmart Inc.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR JACKSON COUNTY

DOROTHY MATTOS,

Plaintiff,

vs.

WALMART, INC.,

Defendant.

Case No.: 19CV44853

SUMMONS

**TO: Defendant Walmart, Inc., c/o Registered Agent CT Corporation System
780 Commercial Street SE, Suite 100, Salem, OR 97301-3465**

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and answer the Complaint filed against you in the above-captioned cause within thirty (30) days from the date of the service of this Summons upon you, and if you fail to so answer, for want thereof, the plaintiff(s) will take judgment against you for the relief prayed for in the Complaint on file herein, a true and correct copy of which is herewith served upon you.

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!

You must “appear” in this case or the other side will win automatically. To “appear” you must file with the Court a legal paper called a “Motion” or “Answer.” The “Motion” or “Answer” must be given to the Court clerk or administrator within thirty (30) days along with the required filing fee. It must be in the proper form and have Proof of Service on the plaintiff’s attorney or, if in the plaintiff does not have an attorney, Proof of Service upon plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, contact the Oregon State Bar’s Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

IDIART LAW GROUP, LLC.

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Of Attorneys for Plaintiff and Trial Attorneys

SUMMONS

THE IDIART LAW GROUP, LLC

PO Box 3700, Central Point, OR 97502

Tel: (541) 772-6969 Fax: (541) 245-0486

10/15/2019 10:55 AM
19CV44853

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR JACKSON COUNTY

DOROTHY MATTOS,

Plaintiff,

vs.

WALMART INC.,

Defendant.

Case No.

COMPLAINT

(Personal Injuries—Premises Liability)
(Claim Over \$50,000.00)
(Not Subject to Mandatory Arbitration)
(Fee Authority 21.160(1)(c))

(Prayer Amount – \$122,000.00)

Plaintiff alleges:

1.

On or about December 10, 2018, Plaintiff entered into the Wal-Mart store 5424 (herein “said Premises”) as an invitee for the purpose of shopping. That portion of said premises onto which Plaintiff entered was owned, maintained and controlled by Defendant, WALMART INC., and was a common area, which was intended for the use of its patrons.

2.

As Plaintiff was standing in the pet food aisle, a bag of dog food fell off of the top shelf directly on top of Plaintiff’s head and shoulder. As a result Plaintiff was injured as described more fully below.

3.

At said time and place Defendant had a duty to inspect for and warn Plaintiff of latent dangers that were known to the owner, and also dangers that, in the exercise of reasonable care, would have

been known to Defendant, and to take reasonable action to protect from foreseeable and unreasonable risk of harm.

4.

Defendant breached that duty and was negligent in one or more of the following particulars:

- a) Defendant failed to properly stock its shelves to ensure that the dog food would not fall on top of its customers;
- b) Defendant failed to warn or protect Plaintiff from the danger by placing appropriate signage about the hazard of falling merchandise; and
- c) Defendant failed to adequately monitor the condition of its shelves.

5.

Defendant's negligence in one or more of the foregoing particulars was a substantial factor in causing Plaintiff to injure herself.

6.

As a result Plaintiff was caused to suffer serious and painful injuries to her head, neck and shoulder, and difficulty performing normal life activities.

7.

The injuries described above are likely to have permanent residual effects. As a result of these injuries Plaintiff has experienced and continues to experience pain and suffering and the limitations of normal and usual activities. Plaintiff should be fully and fairly compensated for these non-economic damages in a sum that is just. An appropriate ceiling for these non-economic damages is \$100,000.00. Plaintiff's injuries are continuing and Plaintiff may seek leave of the Court to amend this amount prior to trial.

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8.

As a further result of the injuries received, Plaintiff has or will incur medical expenses in an amount not expected to exceed \$22,000.00. Plaintiff's injuries are continuing and Plaintiff may seek leave of Court to amend this amount prior to trial.

WHEREFORE, Plaintiff prays for judgment against Defendant, for damages as follows:

1. A sum which will fully compensate Plaintiff for pain and suffering, for interference with normal and usual activities, from the date of injury to the present, and from the present into the future in a sum not expected to exceed \$100,000.00;
2. A sum which will fully and fairly compensate Plaintiff for medical expenses not expected to exceed \$22,000.00;
3. Plaintiff's costs and disbursements incurred herein; and
4. For such other and further relief as the Court may deem just and equitable.

EXECUTED October 15, 2019

IDIART LAW GROUP, LLC.

By: s/ Damian M. Idiart

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Of Attorneys for Plaintiff and Trial Attorneys

AFFIDAVIT OF SERVICE

State of Oregon

County of Jackson

Circuit Court

Case Number: 19CV44853

Plaintiff:

DOROTHY MATTOS

vs.

Defendant:

WALMART, INC.

For:

Damian M. Idiart

Idiart Law Group, LLC

PO BOX 3700

CENTRAL POINT, OR 97502

Received by MALSTROM'S PROCESS SERVING CO. on the 18th day of October, 2019 at 1:16 pm to be served on **WALMART INC. R/A CT CORPORATION SYSTEM, 780 COMMERCIAL STREET SE, STE 100, SALEM, OR 97301-3465.**

I, Bobby Chandler, being duly sworn, depose and say that on the **22nd day of October, 2019 at 11:26 am,** I:

SERVED the within named **WALMART INC. at 780 COMMERCIAL STREET SE, STE 100, SALEM, OR 97301-3465** by personally serving a true copy of the **Summons and Complaint** upon **RYLYNN POOLE**, who is a clerk on duty in the office of the Registered Agent and who is authorized to accept service.

CERTIFICATION OF MAILING: I certify that on **10/24/2019** a true copy of Summons and Complaint along with a statement regarding the date, time and manner of service was mailed to **WALMART INC. R/A CT CORPORATION SYSTEM at 780 COMMERCIAL STREET SE, STE 100, SALEM, OR 97301-3465** by First Class Mail postage paid.



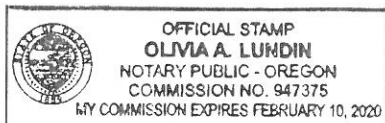
AFFIDAVIT OF SERVICE For 19CV44853

I declare I am a resident of the State of Oregon. I am a competent person 18 years of age or older and not a party to or attorney in this proceeding. I certify that the person, firm, or corporation served is the identical one named in this action. I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

STATE OF OREGON
County of Marion

Subscribed and Sworn to before me on the 24
day of Oct. 2019 by the affiant
who is personally known to me.

Olivia Lundin
NOTARY PUBLIC



Bobby Chandler
Bobby Chandler
Process Server 10/24/19

MALSTROM'S PROCESS SERVING CO.
155 Culver Lane S
Salem, OR 97302
(503) 585-0234

Our Job Serial Number: ONE-2019005254
Ref: 8099

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